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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1480

ROBERT C. BANNERT,
Petitioner,

v.

AMERICAN CAN COMPANY,
Respondent.

BRIEF IN OPPOSITION OF RESPONDENT AMERICAN CAN COMPANY

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TABLE OF CONTENTS

		Page
ARGUMENT		2
I.	Bannert is Not Permitted to Appeal From the Order of the United States Court of Appeals Denying His Motion For a Deferral of Oral Argument	2
II.	A Federal Court Need Not Stay Its Hand Pending the Decision of a State Court on an Issue of State Law	2
III.	The Michigan Supreme Court has Decided the *Woodward* Case Adversely to Petitioner's Position	4
CONCLUSION		5

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Respondent American Can Company ("American Can") respectfully submits this Brief in opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit ("Petition") submitted by Petitioner Robert C. Bannert ("Bannert").

ARGUMENT

I.

Bannert is Not Permitted to Appeal From the Order of the United States Court of Appeals Denying His Motion For a Deferral of Oral Argument.

The United States Court of Appeals for the Sixth Circuit, in an order signed by Judge Lively and filed on March 18, 1975 (Petition, p. 21-23), denied Bannert's motion to defer oral argument of American Can's appeal in this action pending the decision of the Michigan Supreme Court in *Woodward* v *Cadillac Overall Supply Co.* Bannert now contends that "the Court of Appeals should have held this case in abeyance pending the decision of the Michigan Supreme Court in *Woodward* on the controlling issue of state law." (Petition, p. 9) Indeed, Bannert's entire Petition does not seek review of the decision of the Court of Appeals reversing the judgment of the district court but, instead, seeks review solely of the Court of Appeals' denial of that motion. Such an appeal is not permitted.

II.

A Federal Court Need Not Stay Its Hand Pending the Decision of a State Court on an Issue of State Law.

In reversing the district court and holding that Michigan law permits the forfeiture of pension benefits where an employee voluntarily engaged in

competitive employment in violation of a clause providing for such a forfeiture, the Court of Appeals found that two decisions by the Michigan Court of Appeals "lead us to conclude that the Michigan courts would not find forfeiture unconscionable or unreasonable here." (Petition, p. 36) At the time of its decision, the Court was "aware that the same issue herein presented is pending before the Michigan Supreme Court in *Woodward et al* v *Cadillac Overall Supply Co.*, No. 56015, argued June 4, 1975. (Petition, p. 36) The Court of Appeals nonetheless denied Bannert's motion to delay its decision (Petition, p. 21-23) and rendered its decision upon existing precedent.

Bannert contends that the Court of Appeals should have stayed its hand pending the decision of the Michigan Supreme Court in *Woodward*. In support of that contention, Bannert cites cases in which a subsequent state statute or a reversal by the highest state court created "injustices from inconsistent federal and state interpretation of state law. (Petition, p. 8-9) Although such a change in state law might necessitate a reversal of a federal case decided under prior state law, Bannert offers no authority for the proposition that a federal court should delay its own decision and await a state court decision in another case. The Court of Appeals decided this appeal upon the law presented to it. Bannert has advanced no authority that the decision to proceed was incorrect.

III.

The Michigan Supreme Court Has Decided the Woodward Case Adversely to Petitioner's Position

Bannert's Petition is predicated entirely upon his expectation that the Michigan Supreme Court would decide in *Woodward et al* v *Cadillac Overall Supply Co.* that forfeitures of pension benefits are now unlawful under Michigan law. In an opinion rendered on April 21, 1976, the Michigan Supreme Court decided the issue of the lawfulness of such forfeitures adversely to Bannert's expectation. Whether or not the decision in *Woodward* would have had any impact upon this action, Bannert's request that this Court return this case to the Court of Appeals to await the decision of the Michigan Supreme Court, in any event is now moot.

CONCLUSION

This cause should not be reviewed by this Court and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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